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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,245	08/10/2001	Nikola Vukovljak	3882/10	5632
29858	7590	10/22/2003	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022			TAYLOR, BARRY W	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 10/22/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,245

Applicant(s)

VUKOVLJAK ET AL.

Examiner

Barry W Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/25/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-37 are rejected under 35 U.S.C. 102(b) as being anticipated by "About ISMs, Netcool TM/Internet Service Monitors Version 1.1", Developer: Micromuse, Inc. (hereinafter Micromuse), Release date 1999.

Regarding claims 1-37. Micromuse teaches testing realtime Internet availability and response time information on Internet protocols and applications by regularly testing that each service at user-defined intervals (see page 1). Micromuse Internet Service Monitors (ISMs) allow testing of the availability of a particular dial-up point by using existing Post Office Protocol (i.e. POP3), as well as, IMAP (see top page 2) the next-generation Internet Messaging Access Protocol that is likely to replace POP. Micromuse also discloses the ISMs already allows for centralized configuration with distributed monitoring wherein each monitor "instance" is capable of supporting multiple "profiles" (see top of page 2, as well as, Applicant's specification especially page 2 lines 24-25, page 3 lines 4-5, page 4 lines 12 and 28-30). The Examiner notes that Micromuse ISMs read on Applicant's Service Monitor (SM) (see specification page 6 lines 28-29 wherein Applicant's define SM may also be referred to as Internet Service

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Monitor (ISM)). Micromuse openly admits benefits of earlier (i.e. released as early as 1999) ISMs that include pinpoints areas for improving "response time" against stated service levels for e-mail, file transfer, Web page transmission and other services (see the six benefits listed on page 2). Micromuse has already addressed early low-end tools for managing the twelve critical Internet services listed in Figure 1 (see page 3) wherein ISMs "actively" monitors and channels availability and response time data into a central, high performance, memory-resident repository called "ObjectServer" which combines the speed of a high-performance relational database with the flexibility of an "object-oriented" frame work enabling operators to associate Internet response time and availability data with other collected enterprise-wide events and see the "big picture" (see bottom of page 2 as well as Applicant's specification especially page 6 line 28 – page 7 line 6). Micromuse admits that because the suite is integrated with Netcool/OMNibus, the need for a separate staff of Internet specialists is reduced or eliminated. ISMs track Internet service availability and response time automatically, and alert operators of potential problems (see top of page 3). Micromuse discloses ISMs act as a user of each service instead of passively waiting for a device or management system to send out a SNMP trap or log file (see second paragraph page 3 as well as Applicant's specification page 7 lines 7-13). Micromuse even discloses that ISMs improve the manageability of Internet connections, as well as corporate "intranets" and "extranets" (see page 3). Micromuse indeed discloses "dial" monitor capabilities (see figure 1 page 3). Micromuse openly admits to using threads and instances (see first full paragraph page 4). Micromuse have been using "multithreaded" architecture as early

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as 1999 (see second full paragraph page 4) allowing Internet Service Providers the ability to offer customized monitoring services. Micromuse list numerous features (see last five paragraphs page 4) including Web-based configuration based around the concept of "profiles" which include a list of locations where monitoring is to take place, as well as, running monitors in multiple locations. In fact, Micromuse already uses a server that runs on the same machine as the ISMs (see second to last paragraph page 4 which is the same as Applicant's figure 1, see Applicant's figure 1 wherein the Monitoring Station 100 includes both Server 150 and Service Monitors 110). Micromuse discloses the ISMs can already monitor multiple servers and services of each protocol (see last paragraph page 4). Micromuse already admits using architecture that enables simulation of a typical "dial-up", home-based Web transaction from a corporate Network Operations Center (NOC), even if the NOC actually has a high-bandwidth T1 connection (see last paragraph page 5 and continuing to top of page 6). Micromuse pages 6 and 7 list the same individual functions as Applicant's specification page 9, 10.

Conclusion

Response to Arguments


2. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W Taylor whose telephone number is (703) 305-4811. The examiner can normally be reached on Monday-Friday from 6:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone number for this Group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 customer service Office whose telephone number is (703) 306-0377.


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600